

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**COACH, INC., and  
COACH SERVICES, INC.,**

**Plaintiffs,**

**V.**

**JAMES R. OVERTON, III, d/b/a  
LANTEX LLC a/k/a FRESH WEAR,**

**Defendant.**

**8:16CV339**

## ORDER

This matter comes before the court on Plaintiffs' Response to the Court's December 6, 2016, Order ([Filing No. 19](#)), timely filed in response to the court's order directing the Plaintiffs to file evidence of valid service for the defendant or show cause why this case should not be dismissed under [Federal Rule of Civil Procedure 4\(m\)](#). ([Filing No. 16](#)).

Plaintiffs' response states that on July 12, 2016, they employed the services of Thomas & Thomas Court Reporters and Certified Legal Video, LLC, to effect service on the defendant. Plaintiffs made twenty-three attempts to serve the defendant between July 12, 2016, and September 2016. ([Filing No. 19 at pp. 2-3](#)). Counsel for Plaintiffs exchanged several emails with Thomas & Thomas regarding their efforts to serve the defendant. Plaintiffs researched the defendant's appearance and vehicles and provided that information to the process servers to attempt to serve the defendant. Personal service was unsuccessful and the process servers indicated to counsel for Plaintiffs that the defendant was avoiding service. As a result, Plaintiffs mailed a copy of the Complaint to the defendant by first class mail. After review of Plaintiffs' response, the court finds Plaintiffs have acted diligently and shown good cause for the failure to timely serve the defendant in accordance with [Fed. R. Civ. P. 4\(m\)](#).

Plaintiffs filed an affidavit from an attorney, Steve Lefler, dated December 23, 2016, wherein he avers that Overton was served with a summons and complaint “around

the beginning of October,” and that Mr. Lefler will enter an appearance on behalf of Overton, upon resolution of a fee arrangement. ([Filing No. 19-5](#)). Mr. Lefler has not yet entered an appearance on behalf of the defendant and the defendant has not filed an answer or otherwise responded to the Complaint. The court will not consider Mr. Lefler’s affidavit as proof defendant has been properly served under [Fed. R. Civ. P. 4](#). However, for good cause shown, the court will permit Plaintiffs an extension of time to cure the defects in service. Accordingly,

**IT IS ORDERED:** Plaintiffs shall have an extension of time to February 10, 2017, to file with the Clerk of Court evidence of valid service or a properly executed waiver of service for the defendant in accordance with [Fed. R. Civ. P. 4](#).

**DATED: January 11, 2017**

**BY THE COURT:**

**s/ F.A. Gossett  
United States Magistrate Judge**